

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Second Periodic Review of the	)	
Commission's Rules and Policies	)	MB Docket No. 03-15
Affecting the Conversion	)	
To Digital Television	)	
	)	
First-Round Digital Television	)	
Channel Election of	)	File No. BFRECT-20050209AKQ
WABC-DT, New York, NY	)	
	)	
First-Round Digital Television	)	
Channel Election of	)	File No. BFRECT-20050210ATK
WPIX-DT, New York, NY	)	
	)	
To: Media Bureau		

**REPLY TO OPPOSITION**

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## **EXECUTIVE SUMMARY**

American Broadcasting Companies, Inc. (“ABC”) and WPIX, Inc. urge the Media Bureau to grant the Emergency Request for Waiver (“Waiver Request”) so that WABC-TV, New York, New York (“WABC”) will be permitted to replicate its existing analog facility on DTV channel 7 post-transition. In its Comments in Opposition, the New Jersey Public Broadcasting Authority (“NJPBA”) does not raise any issues that warrant denial of the Waiver Request.

Grant of the Waiver Request will not prevent NJPBA from continuing to serve its existing audience inside and outside of the State of New Jersey. Just today, NJPBA rejected ABC’s proposal which would have enabled WNJB to serve more viewers than the station currently serves with its analog facility. In contrast, WABC cannot effectively continue to serve its existing audience on DTV channel 45. DTV channel 7 is clearly a better choice for WABC in terms of preventing co-channel interference conflicts and ensuring New York area viewers’ continued access to over-the-air VHF television signals.

Further, NJPBA’s continuing demand that ABC pay the engineering, legal, maintenance, and ongoing costs of operating WNJB at a site colocated with WABC is plainly unreasonable and belies NJPBA’s claim that ABC has refused to negotiate in good faith. From the outset of its negotiations with NJPBA, ABC has attempted, and continues to attempt, to reach a solution with NJPBA that would reduce the interference between WABC and WNJB and allow both stations to continue to serve their existing viewers.

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To: Media Bureau

**REPLY TO OPPOSITION**

Pursuant to Section 1.45(c) of the rules of the Federal Communications Commission ("FCC" or "Commission"),<sup>1</sup> American Broadcasting Companies, Inc. ("ABC"), licensee of commercial television station WABC-TV and permittee of WABC-DT, New York, New York ("WABC"), by its attorneys, hereby responds to the Comments in Opposition ("Opposition") to

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<sup>1</sup> 47 C.F.R. § 1.45(c). ABC and WPIX, Inc.'s Emergency Request for Waiver ("Waiver Request") is an extraordinary pleading and the Commission has not established a pleading cycle for the filing of comments and replies. Nevertheless, on September 20, 2005, ABC and WPIX, Inc. requested an extension of time, until September 30, 2005, to respond to the Opposition in order to give ABC and NJPBA the opportunity to meet to discuss possible options for resolving their DTV channel interference conflict. *See* Motion for Extension of Time of American Broadcasting Companies, Inc. and WPIX, Inc., MB Docket No. 03-15, File Nos. BFRECT-20050209AKQ and BFRECT-20050210ATK (filed Sept. 20, 2005). On September 27, 2005, ABC and WPIX, Inc. requested a further extension of time, until October 7, 2005, to respond to the Opposition in order to give ABC and NJPBA the opportunity to examine further technical proposals intended to resolve the interference conflict. *See* Motion for Further Extension of Time of American Broadcasting Companies, Inc. and WPIX, Inc., MB Docket No. 03-15, File Nos. BFRECT-20050209AKQ and BFRECT-20050210ATK (filed Sept. 27, 2005). To date, the parties have not been able to resolve the DTV channel conflict. On October 7, 2005, NJPBA rejected ABC's proposal to directionalize WNJB's antenna, which would have eliminated the interference between WABC and WNJB and provided a better service area for WNJB than that currently provided with WNJB's analog facility.

ABC's Emergency Request for Waiver ("Waiver Request") filed by the New Jersey Public Broadcasting Authority ("NJPBA"), licensee of noncommercial educational television station WNJB(TV) and permittee of WNJB-DT, New Brunswick, New Jersey ("WNJB").<sup>2</sup> WPIX, Inc., licensee of station WPIX-TV/DT, New York, New York ("WPIX"), by its attorneys, joins ABC in this Reply as an interested VHF broadcaster in New York City. For the reasons set forth herein, ABC and WPIX, Inc. urge the Media Bureau ("Bureau") to grant ABC's requested waiver of the 0.1 percent standard the Commission used in the first round of digital television ("DTV") channel elections to calculate interference between WABC's DTV channel 7 replication facility and WNJB's DTV channel 8 maximized facility.<sup>3</sup>

## **I. DISCUSSION**

In its Opposition, NJPBA makes three principal arguments against the grant of the Waiver Request. First, NJPBA asserts that WNJB will suffer substantial service losses if the Waiver Request is granted, thereby depriving the State of New Jersey of adequate local television service.<sup>4</sup> Second, NJPBA asserts that DTV channel 45 is a reasonable alternative for the operation of WABC.<sup>5</sup> Finally, NJPBA asserts that colocation of WNJB and WABC, at ABC's sole expense, is the best option for resolving the parties' DTV channel interference conflict.<sup>6</sup>

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<sup>2</sup> See Comments in Opposition to Emergency Request for Waiver of the New Jersey Public Broadcasting Authority, MB Docket No. 03-15, File Nos. BFRECT-20050209AKQ and BFRECT-20050210ATK (filed Sept. 12, 2005) ("Opposition").

<sup>3</sup> See Emergency Request for Waiver of American Broadcasting Companies, Inc. and WPIX, Inc., MB Docket No. 03-15, File Nos. BFRECT-20050209AKQ and BFRECT-20050210ATK (filed Aug. 15, 2005).

<sup>4</sup> See Opposition at 6-9.

<sup>5</sup> See *id.* at 9-10.

<sup>6</sup> See *id.* at 11-15.

As discussed below, NJPBA's assertions are without merit. The grant of the Waiver Request will not prevent NJPBA from continuing to serve its existing audience inside and outside of New Jersey.<sup>7</sup> In contrast, WABC cannot effectively serve its existing audience on DTV channel 45. Further, NJPBA's continuing request that ABC pay the engineering, legal, maintenance, and ongoing costs of operating WNJB at a site colocated with WABC is plainly unreasonable and belies NJPBA's claim that ABC has refused to negotiate in good faith.

Based on the foregoing, ABC and WPIX, Inc. urge the Bureau to grant the Waiver Request so that WABC will be permitted to replicate its existing analog facility on DTV channel 7 post-transition.

**A. A WAIVER WILL NOT PREVENT NJPBA FROM CONTINUING TO SERVE ITS EXISTING VIEWERS.**

NJPBA asserts that a grant of the Waiver Request would result in substantial service losses to WNJB and deprive the State of New Jersey of local television service.<sup>8</sup> Contrary to NJPBA's arguments, grant of the Waiver Request will neither result in interference to WNJB within the station's existing service area nor impair NJPBA's ability to continue to serve New Jersey viewers. As explained in the Waiver Request, the predicted 2.8 percent interference between WABC and WNJB occurs primarily in WNJB's maximized service area.<sup>9</sup> In addition, the majority of WNJB's loss area is located in a part of New York where WNJB currently does not provide service.<sup>10</sup> There is little or no interference predicted between WABC and WNJB

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<sup>7</sup> ABC proposed a technical solution to NJPBA that would allow WNJB to use a directional antenna to increase WNJB's service area beyond that provided with a DTV replication facility. NJPBA has rejected ABC's proposal.

<sup>8</sup> Opposition at 6-9.

<sup>9</sup> See Waiver Request at 10 and Exhibit 1 thereto (map showing area of interference between WABC and WNJB).

<sup>10</sup> See *id.* at 9-10 and Exhibit 5 thereto (map comparing WNJB Grade B contour with WNJB maximized DTV contour).

inside WNJB's replication service area.<sup>11</sup> Thus, both WABC and WNJB would be able to continue to provide service to their existing audiences on DTV channels 7 and 8, respectively.

Grant of the Waiver Request likewise will not prevent NJPBA from continuing to provide local television service to the State of New Jersey. NJPBA currently provides nearly complete television service coverage to the State of New Jersey with the analog facilities of its four member stations.<sup>12</sup> Moreover, NJPBA's existing analog facilities can be replicated with DTV facilities on the channels NJPBA has elected, including the VHF channel 8 election NJPBA has made for WNJB.<sup>13</sup> Thus, NJPBA's assertion that a grant of the Waiver Request will impair NJPBA's ability to provide complete coverage of New Jersey is unfounded. Likewise, NJPBA's suggestion that a waiver will preclude the allotment of VHF channel 8 to New Jersey is without merit.<sup>14</sup>

NJPBA further asserts that it is "charged by the FCC with providing service throughout its service area, without reference to political boundaries" and that many of its viewers live outside of New Jersey but have an interest in New Jersey-oriented programming.<sup>15</sup> ABC does not question NJPBA's responsibility to continue to serve its viewers. Indeed, consistent with the Commission's goals for the DTV transition, ABC seeks the same continuity of service for WABC in the post-transition era.<sup>16</sup> Grant of the Waiver Request will allow both NJPBA and ABC to provide continuity of service to their respective audiences.

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<sup>11</sup> See *id.* at Exhibit 1 (map showing WABC interference to WNJB).

<sup>12</sup> See Exhibit 1 hereto.

<sup>13</sup> See *supra* note 7.

<sup>14</sup> Opposition at 6-7.

<sup>15</sup> *Id.* at 7-8.

<sup>16</sup> See *Second Periodic Review of the Commission's Policies Affecting the Conversion to Digital Television*, Report and Order, 19 FCC Rcd 18279, ¶ 72 (2004) ("*Second DTV Periodic Review*") ("In the creation of the DTV Table of Allotments, each DTV channel allotment was chosen to allow DTV service thereon to best match the Grade B service contour of the NTSC station with which it was paired."); see also *Advanced Television Systems and Their*

Existing viewers of NJPBA's programming would not lose access to such programming if the Waiver Request is granted because of the overlapping signals of the NJPBA stations that currently serve New York. WNJB's sister station WNJN(TV), Montclair, New Jersey ("WNJN") airs the same programming WNJB airs. Moreover, the DTV contour of WNJN encompasses entirely both the existing Grade B service area and the maximized DTV service area of WNJB outside of New Jersey. In fact, the area of overlap between WNJB and WNJN's DTV facilities encompasses more than 16 million persons.<sup>17</sup> Given this overlap between WNJB and WNJN, the millions of viewers in WNJB's maximized service area outside of New Jersey will still be able to receive NJPBA's programming if the Waiver Request is granted.

Without explanation or support, NJPBA summarily asserts that "75% of its schedule is not broadcast on other stations."<sup>18</sup> In fact, as demonstrated in the Waiver Request, WNJB and its sister station WNJN presently air identical programming,<sup>19</sup> and WNJN's DTV service area entirely subsumes WNJB's maximized service area outside of New Jersey, including all of the area where WABC is predicted to cause interference to WNJB.<sup>20</sup> Thus, WNJB's loss area will have little if any adverse consequences from the public's perspective.<sup>21</sup> NJPBA further asserts,

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*Impact Upon the Existing Television Broadcast Service*, Sixth Report and Order, 12 FCC Rcd 14588, ¶ 29 (1997) (subsequent history omitted) ("We continue to believe that our service replication proposal...is the appropriate approach for implementation of DTV. We believe that providing DTV allotments that replicate the service areas of existing stations offers important benefits for both viewers and broadcasters. This approach will ensure that broadcasters have the ability to reach the audiences that they now serve and that viewers have access to the stations that they can now receive over-the-air."); *see also Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 20594, ¶ 20 (2001) ("We established NTSC service replication as a goal in the creation of the initial DTV Table of Allotments. Each DTV channel allotment was chosen to best allow its DTV service to match the Grade B service contour of the NTSC station with which it was paired.").

<sup>17</sup> See Exhibit 2 hereto.

<sup>18</sup> Opposition at 8.

<sup>19</sup> See Waiver Request at Exhibit 8 (local programming aired by all NJPBA stations).

<sup>20</sup> See Exhibit 2 hereto.

<sup>21</sup> The Commission previously has determined that, due to the overlapping signals and programming of NJPBA's network of noncommercial television stations in New Jersey, interference to WNJB's former DTV



also without sufficient explanation, that it plans “to differentiate programming on its channels by splitting operations.”<sup>22</sup> However, NJPBA does not assert that it presently differentiates the programming of its stations operating digitally and NJPBA historically has operated the stations as a network. Thus, NJPBA’s assertion that it plans on “splitting operations” in the future is unsupported and should not be given any weight in the Bureau’s evaluation of the Waiver Request.

Grant of the Waiver Request also is consistent with WNJB’s charter to serve New Jersey citizens as an NJPBA network station. Under New Jersey statute, the primary responsibility of NJPBA is to provide noncommercial radio and television services to citizens *within* the State of New Jersey.<sup>23</sup> Yet, with its maximized DTV facility, WNJB will gain millions of viewers in New York where more than half of its significantly expanded audience would reside.<sup>24</sup> In contrast, WABC is prevented from replicating its existing service area with its desired channel 7 DTV facility due to the 2.8 percent interference predicted to occur in WNJB’s currently unserved gain area.<sup>25</sup> This result is highly inequitable given the existing service areas of WABC and

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channel 18 facility resulting from land mobile operations would not harm the public. *See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Sixth Report and Order, 12 FCC Red 14588, n.296 (1997) (“We recognize the comments with regard to use of channel 18 for DTV service in the New Jersey. As suggested in the Broadcasters’ Modified Table, the Table of Allotments included herein pairs this channel with a noncommercial station in New Brunswick, New Jersey. In providing this allotment, we recognize that the majority of the New Brunswick area is also served by the three other stations in the New Jersey public broadcast network. Thus, if some restrictions on the use of channel 18 are necessary to protect existing land mobile operations, viewers in the New Brunswick area should still be able to receive noncommercial DTV service.”).

<sup>22</sup> Opposition at 8.

<sup>23</sup> *See* New Jersey Public Broadcasting Authority Act of 1968, N.J. Stat. § 48:23-2 (defining “public broadcasting” as “all aspects of noncommercial radio and television...including the production and dissemination of public and community affairs, educational, cultural and instructional information to the public at large *within the State*”) (emphasis added); *see also* Report of Office of the State Auditor on the New Jersey Public Broadcasting Authority (Jan. 7, 1999) at 1 (“The prime responsibility of the New Jersey Public Broadcasting Authority is to provide noncommercial public and educational television and radio broadcasting services *to New Jersey’s citizens.*”) (emphasis added).

<sup>24</sup> *See* Waiver Request at 13.

<sup>25</sup> *See* Waiver Request at Exhibit 1 (map showing area of interference between WABC and WNJB).

WNJB, NJPBA's charter to serve New Jersey viewers, and the duplicative service already provided by NJPBA network station WNJN in WNJB's maximized service area. For these reasons, grant of the Waiver Request is the most equitable solution and will allow both ABC and NJPBA to serve their existing viewers in accordance with the Commission's goal of continuity of service for the DTV transition.<sup>26</sup>

**B. CHANNEL 45 IS NOT A REASONABLE ALTERNATIVE FOR POST-TRANSITION OPERATION OF WABC.**

NJPBA asserts that DTV channel 45 is a reasonable alternative for post-transition operation of WABC because a channel 45 facility "would serve several hundred thousand more people than are served by ABC's current Channel 7 analog facility."<sup>27</sup> NJPBA also asserts that "a non-located Channel 7 DTV facility would result in a troubling loss of service to almost 93,000 viewers in WABC's existing service area, almost all of whom reside in New Jersey."<sup>28</sup> There are several reasons why post-transition operation of WABC on DTV channel 45 is not a reasonable alternative and why DTV channel 7 is clearly the better option for WABC.

First, WABC will provide the best interference-free coverage on DTV channel 7. WABC's analog channel 7 facility provides interference-free service to 18,515,602 persons.<sup>29</sup> A WABC DTV facility on channel 45 would provide interference-free service to 19,021,607 persons.<sup>30</sup> A WABC DTV facility on channel 7 would provide interference-free service to 19,324,895 persons.<sup>31</sup> Hence, a channel 7 DTV facility will provide interference-free service to

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<sup>26</sup> See *supra* note 16.

<sup>27</sup> Opposition at 9.

<sup>28</sup> *Id.* at 10.

<sup>29</sup> See DTV Channel Election Information and First Round Election Filing Deadline, DA 04-3922 (rel. Dec. 21, 2004) at Table I.

<sup>30</sup> See *id.*

<sup>31</sup> This figure was derived based on data published by the Commission after first round of DTV channel election conflicts, available at [http://www.fcc.gov/oet/dtv/dtv\\_apps.html](http://www.fcc.gov/oet/dtv/dtv_apps.html).

303,288 more persons than a channel 45 DTV facility and to 809,295 more persons than WABC's current analog facility.<sup>32</sup> Moreover, NJPBA's assertion that WABC will lose 93,000 viewers on DTV channel 7 due to interference from WNJB on DTV channel 8 assumes that WNJB is operating its maximized DTV facility (*i.e.*, at its currently authorized 20.2 kW). Assuming WNJB directionalizes its antenna as ABC has proposed, which NJPBA has now rejected, WABC's loss from WNJB's adjacent channel interference would be almost completely eliminated and WNJB's service area would have been increased. Thus, DTV channel 7 is clearly a better choice than DTV channel 45 for WABC in terms of interference-free service coverage to the public.

Second, operation of WABC on DTV channel 45 will result in more serious DTV co-channel interference conflicts than the present adjacent channel conflict with WNJB. As explained in the Waiver Request,<sup>33</sup> operation of WABC on DTV channel 45 would give rise to co-channel interference conflicts with stations WOLF-DT, Hazleton, Pennsylvania, and WEDH-DT, Hartford, Connecticut, both of which plan to operate on DTV channel 45.<sup>34</sup> In combination, the proposed DTV operations of WOLF-DT and WEDH-DT are predicted to result in a loss of

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<sup>32</sup> Given the size of the New York market and the large population currently served by WABC's analog facility on channel 7, the increase in WABC's population coverage on DTV channel 7 (four percent) is relatively small and, contrary to NJPBA's claim, falls far short of a "maximized" facility. As the Commission has recognized, "[a]s a practical matter, nearly every station that has fully replicated its analog coverage will have maximized its DTV coverage by reaching at least some small areas beyond the analog Grade B contour." *Second DTV Periodic Review* at n.195. Moreover, WABC's gain on DTV channel 7 arises from conforming its DTV channel 45 allotment to a channel 7 facility.

<sup>33</sup> See Waiver Request at 18-19 and Exhibit 7 thereto (map showing interference to WABC on channel 45 from WOLF and WEDH).

<sup>34</sup> See File No. BPEDT-19990113KG. DTV channel 45 became available to WEDH after its sister Connecticut Public Broadcasting station WEDN(TV), Norwich, Connecticut ("WEDN"), petitioned the Commission to substitute WEDN's allotted DTV channel 45 with DTV channel 9. See *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Norwich, Connecticut)*, Notice of Proposed Rulemaking, 19 FCC Rcd 8603 (2004). ABC has opposed WEDH and WEDN's channel 45 swap and the re-allotment of DTV channel 45 to Hartford. See *Objection to Digital Television Allotment Exchange, American Broadcasting Companies, Inc.*, File Nos. BPEDT-19990113KG and BPEDT-20031008AAT (filed Jan. 15, 2004); *Supplement to Objection, American Broadcasting Companies, Inc.*, MB Docket No. 04-184, File Nos. BPEDT-19990113KG and BPEDT-20031008AAT (filed Sept. 2, 2005).

nearly half a million persons to WABC.<sup>35</sup> Moreover, the interference among WABC-DT, WOLF-DT and WEDH-DT is co-channel, and receivers would be less tolerant of such co-channel interference than they would be of the adjacent channel interference between WABC and WNJB. Thus, DTV channel 7 is clearly a better a choice than DTV channel 45 for WABC in terms of preventing more serious co-channel interference conflicts and greater service losses.

Third, the migration of WABC to DTV channel 45 will cause a significant number of New York City viewers to lose indoor reception of WABC programming, reception that some have enjoyed for over 50 years. As explained in the Waiver Request, high band VHF signals have improved building penetration and indoor reception performance over UHF signals and thus are particularly well suited for overcoming the indoor television reception problems caused by the reinforced concrete, high-rise buildings that are common to New York City.<sup>36</sup> The loss of indoor reception to viewers in New York City is no small matter. A significant number of viewers in New York City still rely on over-the-air television (“OTA”) as their sole source of news and informational programming and most of these viewers rely on indoor reception to receive these OTA signals. A recent study found that 29.1 percent of WABC’s viewers rely in whole or in part on over-the-air service and 9.1 percent of WABC’s viewers rely exclusively on over-the-air service.<sup>37</sup> There can be little doubt that causing viewers to lose over-the-air access

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<sup>35</sup> See Waiver Request at Exhibit 7 (map showing interference to WABC on channel 45 from WOLF and WEDH).

<sup>36</sup> See *id.* at 20-21. The Commission long has recognized that VHF signals are preferable in large cities. See, e.g., *Amendment of the Commission’s Rules, Regulations and Engineering Standards Concerning the Television Broadcast Service*, Sixth Report and Order, 41 F.C.C. 148, ¶ 66 (1952) (“[P]ropagation characteristics in the VHF are different in some respects from those in the UHF. [I]n establishing the Table of Assignments, [p]rimary consideration was given to the fact that the VHF can effectively cover large areas, and VHF was used wherever possible in larger cities since such cities have broad areas of common interest.... Thus, the Commission concluded that in order to achieve an equitable distribution of facilities, metropolitan centers with their large aggregations of people should be assigned more VHF channels than communities comprising fewer people.”).

<sup>37</sup> These figures are from a survey ABC performed in 2004 on WABC’s over-the-air television viewership. See Comments of The Walt Disney Company, MB Docket No. 04-210 (filed Aug. 11, 2004).

to WABC's entertainment, local news and public affairs programming is contrary to the public interest, a fact that again demonstrates that DTV channel 7 is the best choice for WABC and the viewers in New York City.

Finally, the post-transition assignment of WABC to channel 45 threatens the future of any remaining VHF broadcasters in the New York market. Because of its unresolved DTV channel conflict with WNJB, Fox Television Stations Inc. ("Fox"), licensee of WWOR-TV, Secaucus, New Jersey, already has been forced to change its DTV channel election from VHF channel 9 to UHF channel 38.<sup>38</sup> Noncommercial broadcaster Educational Broadcasting Corporation ("EBC"), which has been approved to operate noncommercial educational station WNET(TV), Newark, New Jersey, on DTV channel 13,<sup>39</sup> has expressed serious concerns about the loss of both ABC and Fox from the VHF band in New York City, a result that would leave EBC as one of the few remaining VHF broadcasters in the City.<sup>40</sup> If the number of VHF stations in New York City drops from the seven analog stations operating today to one or even two DTV stations post-transition, consumers will have little incentive to purchase VHF antennas to receive those signals – a phenomenon that WNET noted could result in "the sudden, unexpected inability to receive Thirteen's outstanding noncommercial public affairs, entertainment, children's and informational programming" among that portion of the population that relies on over-the-air reception, especially indoor reception, to receive its news and information programming.<sup>41</sup> Thus,

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<sup>38</sup> See File No. BFRCCCT-20050815AAP (filed Aug. 15, 2005).

<sup>39</sup> See File No. BREET-20050210AHI (approved June 23, 2005).

<sup>40</sup> See EBC Comments. As EBC points out, over-the-air reception of digital UHF and VHF signals requires consumers to have distinct antennas in the home. See *id.* at 6-7. If few VHF stations serve a market, consumers, particularly lower-income families and the elderly who rely the most on over-the-air television, have little incentive to invest in VHF or dual-band reception equipment. See *id.*

<sup>41</sup> See *Id.*

not only is DTV channel 7 a better choice for viewers in New York City, it also will help ensure that viewers continue to receive the DTV programming of the other VHF stations in the market.

**C. COLOCATION ON NJPBA'S TERMS IS NOT A REASONABLE ALTERNATIVE.**

NJPBA asserts that colocation of WABC and WNJB in New York City is a vastly superior solution for resolving the channel conflict between the stations because of the spectrum efficiencies colocation achieves.<sup>42</sup> NJPBA also insists that the costs of collocating WABC and WNJB should be borne by ABC exclusively, including the ongoing engineering, legal, maintenance, power and other costs associated with operating both stations at a common site.<sup>43</sup> NJPBA also seeks additional reimbursement from ABC in exchange for its consent to colocate WNJB on an ongoing basis.<sup>44</sup> ABC acknowledges that colocation of WABC and WNJB, if it is determined to be technically feasible at both the Empire State Building and Freedom Tower, would be a spectrum-efficient solution. However, ABC cannot agree to NJPBA's unreasonable demand that ABC pay the cost of constructing and operating WNJB at a colocated site with WABC in New York City in perpetuity.

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<sup>42</sup> See Opposition at 11-12. NJPBA also insists that colocation will save ABC millions of dollars based on a BIA study, which was not submitted with NJPBA's Opposition. According to NJPBA, the BIA study concludes that ABC would save between \$6.0 and \$13.1 million by constructing WABC on channel 7, rather than channel 45, at the Empire State Building and between \$7 and \$14.7 million by constructing WABC on channel 7, rather than channel 45, at Freedom Tower. See *id.* at 13. Since ABC has not been supplied with the BIA study nor provided with an explanation of the assumptions and bases for these estimates, it is not possible to analyze the accuracy of NJPBA's assertions. Absent the submission of the BIA study in the record, no probative weight can be afforded such conclusions. In ABC's experience, on the other hand, the cost differential between constructing a UHF and a VHF DTV facility is much less and is likely to be under \$500,000. Thus, ABC is hardly receiving a "financial windfall of millions of dollars" by constructing WABC on DTV channel 7. *Id.* at 15.

NJPBA also points out that it was excluded from the Metropolitan Television Alliance ("MTA") formed to rebuild the broadcast facilities lost on September 11, 2001. See *id.* at 4. NJPBA apparently was not included in the MTA plan for one obvious and perfectly justified reason—because NJPBA's broadcast facilities were not directly impacted by nor destroyed in the September 11 attack on the World Trade Center and relocation of WNJB did not fall within the scope of MTA's charter.

<sup>43</sup> Opposition at 12-14; see also Waiver Request at Exhibit 10 (first letter from NJPBA).

<sup>44</sup> Opposition at 14; see also Waiver Request at Exhibit 10 (first letter from NJPBA).

As an initial matter, notwithstanding its spectrum-efficiencies, colocation of WNJB and WABC does not further the Commission's public interest objective for the "fair, efficient, and equitable" distribution of DTV licenses.<sup>45</sup> As NJPBA points out,<sup>46</sup> the State of New Jersey historically has been underserved by VHF television stations, and the Commission has had a longstanding policy of promoting the allotment of television stations within the State.<sup>47</sup> The allotment of DTV channel 8 to New Brunswick is only the second VHF allotment to New Jersey. Yet NJPBA wants to remove WNJB's channel 8 facility from New Jersey entirely and move it to New York City so that WNJB can serve more viewers in New York and Connecticut. This result is entirely inconsistent with the Commission's DTV allotment scheme, the Commission's policy to promote VHF service in New Jersey, and NJPBA's charter to serve the citizens of New Jersey. As discussed above, NJPBA can continue to serve its existing viewers and New Jersey residents with the DTV facilities of its network of stations, including the directional antenna facility solution ABC has proposed for WNJB. Thus, the Commission should reject NJPBA's attempt to further expand WNJB's service area at ABC's expense.

Furthermore, the Commission should not condone NJPBA's attempt to take advantage of the channel conflict between WABC and WNJB in order to exact substantial sums of money from ABC. Construction of a colocated WNJB facility at the Empire State Building, if such construction at the already crowded site is technically and physically possible at this time,<sup>48</sup> is

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<sup>45</sup> 47 U.S.C. § 307(b).

<sup>46</sup> Opposition at 6-7.

<sup>47</sup> See *Petition to Reallocate VHF Television Channel 9 from New York, New York, to a City Within the City Grade Contour of Station WOR-TV*, Report and Order, 53 Rad. Reg. 2d (P&F) 469 (1982) (making the first VHF allotment to the State of New Jersey); see also 47 U.S.C. § 331(a).

<sup>48</sup> It is generally understood, however, that having several high VHF stations combined on a single antenna results in reduced coverage for all the stations, and combining odd and even channels on a common antenna requires more complex filtering. In addition, WABC currently shares its high VHF antenna with three other high VHF

estimated to cost millions. Once WABC relocates to Freedom Tower, ABC also would be obliged to relocate and operate WNJB at the new site with initial construction and recurring costs that are currently not possible to estimate, but such costs almost certainly will be in the millions of dollars. Consequently, colocation on NJPBA's terms would cost ABC multiple millions of dollars in the long run in order to construct and operate DTV facilities for WNJB at two different sites in New York City—first at the Empire State Building and later at Freedom Tower—and to pay WNJB's recurring power and rental costs. These costs are by no means “modest” nor do they constitute a “minimal burden” to ABC.<sup>49</sup> For these reasons, NJPBA's demands are unreasonable and unacceptable to ABC. In addition, NJPBA's position is inconsistent with the Commission's intent that television broadcasters should each incur the costs of transitioning their stations to DTV service for the benefit of the public.<sup>50</sup>

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stations at the Empire State Building, all of whom also would have to agree to WNJB's colocation proposal. One of those stations is WNET, licensed to EBC, supports the Waiver Request. *See* EBC Comments.

<sup>49</sup> Opposition at 2 and 14. NJPBA asserts that requiring ABC to reimburse NJPBA for colocation expenses is consistent with the Commission's decision to require Nextel to reimburse broadcast auxiliary licensees for the costs of relocating operations to new spectrum. *See* Opposition at n.12. NJPBA's analogy is flawed. Nextel's obligation to pay the relocation costs to incumbent spectrum users arose from the Commission's policy requiring new entrants to relocate, prior to commencing operations, incumbent licensees that would be displaced by the new entrant. *See* 47 C.F.R. § 24.239. This policy has no bearing on a DTV channel election conflict arising between two television broadcasters.

<sup>50</sup> *See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Fifth Report and Order, 12 FCC Rcd 12809, ¶ 60 (1997). (“One of our objectives is to promote broadcasters' ability to build digital businesses so that their valuable free programming service will continue. We anticipate that some licensees may find it beneficial to develop partnerships with others to help make the most productive and efficient use of their channels. We intend to give broadcasters flexibility in structuring business arrangements and attracting capital to build a successful DTV business. One of our overarching objectives is to promote the success of digital television. We anticipate that some licensees may find it beneficial to develop partnerships with others to help make the most productive and efficient use of their channel, and we will look with favor on such arrangements. Broadcasters may find it useful to work with other broadcasters or others who have special expertise in exploiting digital technology. Parties could come together for the sharing of facilities, costs, and equipment, the development and provision of programming and service offerings, access to capital and financing, the establishment of business plans, and the like. Such arrangements will aid both broadcaster and public, by helping the broadcaster achieve the most competitive and beneficial business strategy and by ensuring for the public the best use of the digital spectrum, including not only the most efficient use of the spectrum but also the greatest array of valuable services....*Whatever the arrangement, it is the licensee who remains responsible for ensuring the fulfillment of all obligations incumbent upon a broadcast licensee.*”) (emphasis added).



**D. ABC HAS NEGOTIATED IN GOOD FAITH.**

NJPBA asserts that “ABC had no intention to negotiate in good faith unless NJPBA accepted its patently unreasonable proposal to waive interference, reduce power and directionalize with no consideration of any kind.”<sup>51</sup> NJPBA further asserts that ABC made no attempt to contact NJPBA until six days before the Form 383 filing deadline of August 15, 2005.<sup>52</sup> From the outset of its negotiations with NJPBA, ABC has attempted, and continues to attempt, to reach a reasonable solution with NJPBA that would reduce the interference between WABC and WNJB and allow both stations to continue to serve their existing viewers.<sup>53</sup> In fact, ABC presented NJPBA with a technical solution to the channel conflict two weeks before the Form 383 filing deadline, which NJPBA flatly rejected, proposing instead to colocate WABC and WNJB at ABC’s sole expense.<sup>54</sup>

Before filing the Waiver Request, ABC reiterated its interest in reaching a mutually beneficial solution, but NJPBA merely restated its desire to colocate WNJB at ABC’s expense.<sup>55</sup> ABC and NJPBA had planned to meet to discuss technical proposals on August 17, 2005, but NJPBA cancelled the meeting after ABC filed the Waiver Request. Since that time, representatives of WABC have contacted WNJB numerous times, and the parties met on September 23, 2005. Although they did not reach an agreement at the meeting, ABC and NJPBA continue to discuss the issue.

Thus, for two months now, ABC and NJPBA have had various discussions in an attempt to resolve the DTV channel interference conflict between WABC and WNJB. In that time, ABC

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<sup>51</sup> Opposition at 16.

<sup>52</sup> *Id.*

<sup>53</sup> See Waiver Request at Exhibit 9 (first letter from ABC).

<sup>54</sup> See *id.* at Exhibits 9 (first letter from ABC) and 10 (first letter from NJPBA).

<sup>55</sup> See *id.* at Exhibits 11 (second letter from ABC) and 12 (second letter from NJPBA).

has presented NJPBA with technical proposals that would allow WNJB and WABC to continue to serve their existing audiences. In fact, under ABC's pending proposal before NJPBA to directionalize WNJB's antenna, WNJB would serve more viewers than the station would with a replication facility. ABC has offered to pay most of the costs of implementing this proposal, including the cost for purchasing a directional antenna and the engineering, design, and construction expenses required to replicate WNJB's analog facility. On October 7, 2005, NJPBA rejected ABC's proposal, even though the proposal would have eliminated the interference between WABC and WNJB and increased WNJB's service area.

As the foregoing demonstrates, ABC has been reasonable throughout its negotiations with NJPBA and has engaged in good faith efforts to resolve the channel conflict in a manner mutually beneficial to both parties. Thus, NJPBA's suggestion that ABC's sincere attempt to negotiate a solution to the channel conflict was nothing more than a "ploy designed to enable ABC to portray NJPBA as an unreasonable party" is absurd.<sup>56</sup> ABC's only objective in its discussions with NJPBA is to resolve the channel conflict amicably in a manner that benefits both parties. Portraying NJPBA as an unreasonable party, as NJPBA claims, does nothing to achieve this objective and in fact is counter-productive.

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<sup>56</sup> See Opposition at 15-16.

## II. CONCLUSION

Grant of the Waiver Request will allow both ABC and NJPBA to serve their existing viewers and is consistent with the Commission's goals for the DTV transition and NJPBA's charter to serve the citizens of New Jersey. For the foregoing reasons, ABC and WPIX, Inc. urge the Bureau to waive the 0.1% interference standard in the case of the impermissible interference predicted to WNJB's maximized DTV facility from WABC's elected DTV replication facilities.

Respectfully submitted,

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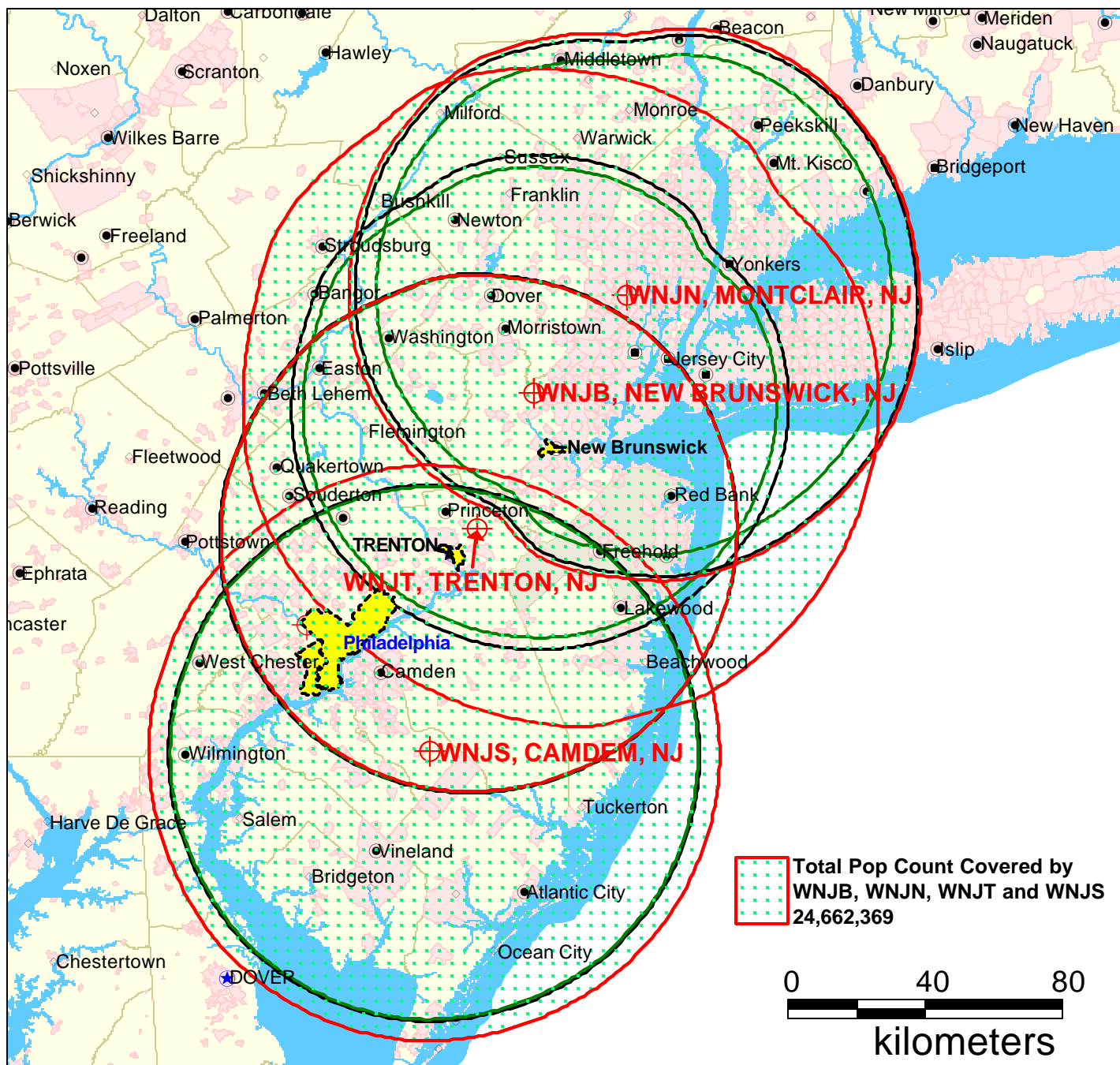
Its Attorneys

October 7, 2005

## LIST OF EXHIBITS

<b><u>Exhibit No.</u></b>	<b><u>Description</u></b>
<b>1</b>	Map showing service areas of all NJPBA stations
<b>2</b>	Map showing area of overlap between WNJB and WNJN
<b>3</b>	Declaration of J. David Davis, General Manager of WABC-TV
<b>4</b>	Declaration of Alfred E. Resnick, P.E., consulting engineer to ABC

## **Exhibit 1**



## PREDICTED COVERAGE CONTOURS

**PREDICTED CURRENT DTV FACILITY  
F(50,90) NOISE LIMITED CONTOUR**

**WNJB COVERAGE AREA  
SHADED ALLTOGETHER**

**PREDICTED ALLOTTED DTV  
F(50,90) NOISE LIMITED CONTOUR**

**PREDICTED LICENSED TV  
F(50,50) GRADE B CONTOUR**

**OCTOBER 2005**

**CARL T. JONES  
CORPORATION**

County	Population
Atlantic, NJ	252,552
Bergen, NJ	884,118
Bronx, NY	1,332,711
Bucks, PA	597,632
Burlington, NJ	423,394
Camden, NJ	508,932
Cape May, NJ	64,626
Chester, PA	236,974
Cumberland, NJ	146,438
Delaware, PA	550,864
Dutchess, NY	22,059
Essex, NJ	793,633
Fairfield, CT	369,901
Gloucester, NJ	254,673
Hudson, NJ	608,975
Hunterdon, NJ	122,219
Kent, DE	742
Kings, NY	2,465,896
Lehigh, PA	67,909
Mercer, NJ	350,748
Middlesex, NJ	750,225
Monmouth, NJ	615,238
Monroe, PA	74,822
Montgomery, PA	675,876
Morris, NJ	470,212
Nassau, NY	1,336,799
New Castle, DE	449,891
New York, NY	1,537,066
Northampton, PA	237,350
Ocean, NJ	510,916
Orange, NY	295,665
Passaic, NJ	489,049
Philadelphia, PA	1,517,550
Pike, PA	27,285
Putnam, NY	70,970
Queens, NY	2,224,917
Richmond, NY	443,704
Rockland, NY	286,753
Salem, NJ	64,285
Somerset, NJ	297,273
Suffolk, NY	538,741
Sullivan, NY	117
Sussex, NJ	144,166
Union, NJ	522,541
Warren, NJ	102,437
Westchester, NY	923,525
24,662,369	24,662,369

Total Pop Count Covered by WNJB, WNJN, WNJT and WNJS 24,662,369

## **Exhibit 2**





### PREDICTED COVERAGE CONTOURS

**WNJB-DT CH. 8, NEW BRUNSWICK, NJ (CP MOD)**  
 Predicted Noise Limited Contour  
 F(50,90), 36 dBu, 20.2 kW, 212 m HAAT  
 278 m RCAMSL, 32754 D-ANT



Coverage Overlap  
 Area: 15,250 Sq. Km  
 Pop Count: 16,364,954

**ALLOTTED WNJN-DT CH. 51, MONTCLAIR, NJ**  
 Predicted Noise Limited Contour  
 F(50,90), 41 dBu, 179 kW, 238 m HAAT  
 305 m RCAMSL, REP NJMONTCLAIR\_51 D-ANT

SEPTEMBER 2005

**CARL T. JONES**  
 CORPORATION

County	Population
Bergen, NJ	884,118
Bronx, NY	1,332,711
Essex, NJ	793,633
Fairfield, CT	35,326
Hudson, NJ	608,975
Hunterdon, NJ	88,075
Kings, NY	2,465,896
Mercer, NJ	30,681
Middlesex, NJ	748,785
Monmouth, NJ	531,311
Monroe, PA	886
Morris, NJ	470,212
Nassau, NY	1,336,799
New York, NY	1,537,066
Northampton, PA	859
Orange, NY	137,698
Passaic, NJ	489,049
Pike, PA	18,256
Putnam, NY	56
Queens, NY	2,224,917
Richmond, NY	443,704
Rockland, NY	286,753
Somerset, NJ	297,273
Suffolk, NY	72,094
Sussex, NJ	144,166
Union, NJ	522,541
Warren, NJ	66,492
Westchester, NY	796,622
Total Pop Count	16,364,954

## **Exhibit 3**

**DECLARATION OF J. DAVID DAVIS**

I, J. David Davis, hereby declare under penalty of perjury to the best of my knowledge, belief and ability:

- a. I am President and General Manager of WABC-TV, New York, New York.
- b. I have reviewed the foregoing Reply to Opposition of ABC and WPIX, Inc. and the factual information contained therein is true and accurate.

  
J. David Davis

October 7, 2005

## **Exhibit 4**



Declaration of Alfred E. Resnick, P. E.

I am a consulting engineer, an employee of the Carl T. Jones Corporation with offices in Springfield, Virginia. My experience and education are a matter of record with the Federal Communications Commission. I am a registered professional engineer in the Commonwealth of Pennsylvania, PE-027589E.

This office has been authorized to prepare engineering studies and figures in support of the Reply to Opposition filed by American Broadcasting Companies, Inc. and WPIX, Inc.

The engineering data, calculations and exhibits submitted in support of the Reply to Opposition were prepared by me or under my direct supervision. Where data were available from the FCC, these data were employed, and, in other instances, accepted engineering practices, Longley-Rice calculations per OET Bulletin 69, February 6, 2004 edition, and other guidelines as contained in the Commission's Rules were employed.

As to these data and results, I verily believe them to be correct.

Dated: October 7, 2005

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Alfred E. Resnick, P. E.

**CERTIFICATE OF SERVICE**

I, Dayle Jones, of Akin Gump Strauss Hauer & Feld, LLP, certify that a copy of the foregoing Reply to Opposition filed on behalf of American Broadcasting Companies, Inc., and WPIX, Inc. was served, except as otherwise noted, via first-class mail on this 7th day of October 2005, upon the following:

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/s/ Dayle Jones \_\_\_\_\_  
Dayle Jones

\* Denotes hand delivery